

GRAMA and the Open and Public Meetings Act

Availability of Minutes of Open Meetings -- Options

1. How Soon Can I Get a Copy of the Minutes?

Problem:

- A citizen or the media may want a copy of the minutes of an open public meeting before the entity is ready;
- The entity may be slow to produce the minutes because of administrative delays, including staff workload, review by members of the public body, or other issues;
- The public has a right to know what happened in a timely manner; and
- In some circumstances, if the minutes are not available timely, they may not be helpful at all.

Current Statutory Provisions/Notes:

- The Open and Public Meetings Act (OPMA)¹ states that minutes and a recording must be available within a reasonable time after the meeting (See Subsection 52-4-203(4)).
- What is a reasonable time?
- The Government Records Access and Management Act (GRAMA)² states that drafts, (which include drafts of minutes) are protected records; but requires disclosure of drafts that are externally circulated or relied upon in carrying out action or policy (See Subsection 63G-2-305(22) and 63G-2-301(3)(j) and (k)).
- OPMA uses the term "written minutes" but does not address or make a distinction between "unapproved" minutes and "approved" minutes.³

Policy Options

1a. Keep the status quo

Pros:

- provides flexibility for the variety of public bodies covered by the acts
- deadlines may be difficult for some entities because of staffing or equipment limitations

Cons:

- time for providing minutes would remain uncertain

1b. Require the recording to be immediately available (e.g., within one business day of request)

Pros:

- the administrative burden for preparation is minimal compared to written minutes
- the requester has full access to what was said at the meeting and can make their own notes

Cons:

- the deadline may be difficult for some entities because of staffing or equipment limitations

1c. Define "reasonable time" for making the written minutes available to a requester

¹ Utah Code Ann. Title 52, Chapter 4, Open and Public Meetings Act

² Utah Code Title 63G, Chapter 2, Government Records Access and Management Act

³ Draft minutes could refer to either "unapproved" minutes or "approved" minutes that have not been prepared in final form.

Pros:

- a standard deadline provides clarity and uniformity

Cons:

- for some entities a deadline may extend the time that minutes are actually available
- the deadline may be difficult for some entities due to staffing workload

Note: Proposed 2008 General Session H.B. 16, "Minutes of Open and Public Meetings," took a similar approach requiring that minutes be available within 14 days. The bill did not pass.

- 1d. Make a distinction between "unapproved" minutes and "approved" minutes and require "unapproved" minutes to be available within a certain number of days after the meeting or by the next regularly scheduled meeting

Pros:

- making a distinction between "unapproved" minutes and "approved" minutes may reduce administrative delays
- a standard deadline provides clarity and uniformity

Cons:

- unapproved minutes may be changed before they are approved
- drafts are protected under GRAMA regardless of time considerations (may require new exception)
- a deadline may extend the time until minutes are actually available
- the deadline may be difficult for some entities due to staff workload

2. How Soon Can I Get a Copy of the "Approved" Minutes

Problem: A government entity relies on approved minutes for its official record of the meeting, as does the public.

Current Statutory Provisions/Notes

- OPMA says "written minutes shall be the official record of action taken at the meeting." (See Subsection 52-4-203(7))
- Though a long-standing tradition and a sound practice, OPMA makes no mention of approval of minutes or how a draft set of minutes becomes the official record⁴ of action taken⁵ -- should it?

Policy Options

- 2a. Keep the status quo

Pros:

- provides flexibility for the variety of public bodies covered by the acts
- any deadline may be difficult for some entities, because of staffing or equipment limitations

Cons:

- there is no requirement or uniform practice for approving minutes in OPMA

⁴ Robert's Rules of Order defined minutes: "Minutes, the official record of proceedings at a meeting." Robert's Rule of Order, Chapter X, Definition of Parliamentary Terms, p. 153, 1974

⁵ Ambrose v. Board of Education, 626 P.2d 916 (Or. Ct. App. 1981) In a persuasive, but not binding case an Oregon court ruled "Minutes do no more than record actions; if they accurately record an action, they can constitute written notice of that action, whether or not they have been formally approved."

2b. Require minutes to be approved by the public body

Pros:

- provides a clear process for minutes to become the "official record"
- public body approval adds legitimacy, ownership, and finality
- codify to help maintain current traditional practices

Cons:

- public entities can currently establish their own rules for approving minutes
- it may be unnecessary -- minutes are a record of what happened in the meeting regardless of whether they are approved by the public body

2c. Require approved minutes to be available soon after the meeting in which they are approved (e.g., within one or two business days)

Pros:

- a standard, realistic deadline provides clarity and uniformity

Cons:

- the deadline may be difficult for some entities due to staff workloads

2d. Require minutes to be considered for approval at the next regularly scheduled meeting of the public body if a quorum is present

Pros:

- a standard realistic deadline provides clarity and uniformity

Cons:

- the deadline may be difficult for some entities due to staff workload
- this may delay the production of minutes more than current practice in some entities